

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES MICAH EL PAPA ZIAN,

Plaintiff,

v.

J. DOERER,

Defendant.

Case No. 1:24-cv-01182-JLT-HBK (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION WITHOUT PREJUDICE¹

14-DAY DEADLINE

Plaintiff John Meza is a federal prisoner previously incarcerated in United States Penitentiary in Atwater (“USP Atwater”) is proceeding pro se and *in forma pauperis* in this civil rights action on his First Amended Complaint. (Doc. Nos. 4, 6). For the reasons set forth below, the undersigned recommends that the District Court dismiss this action without prejudice for Plaintiff’s failure to comply with a court order and prosecute this action.

BACKGROUND

After Plaintiff’s action was severed (Doc. No. 1), Plaintiff filed a First Amended Complaint pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*²

¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

² 403 U.S. 388 (1971).

1 (“*Bivens*”) and the Federal Torts Claim Act (“FTCA”) stemming from a sixty (60) day lockdown
2 at USP Atwater. (*See generally* Doc. No. 4). Specifically, Plaintiff claimed that during a 60-day
3 institutional lockdown, Plaintiff was confined to his cell for 24 hours a day and did not have
4 access to: (1) administrative grievance forms; (2) courts; (3) communication; (4) mail; (5)
5 medical treatment; (6) personal property; (7) commissary; and (8) cleaning supplies. (*See*
6 *generally, id.*). As a result of the lockdown, Plaintiff generally alleged unspecified claims under
7 the FTCA against the United States, and claims against the individual defendants for alleged
8 violations of his First Amendment rights to free speech and access to the courts; Fifth
9 Amendment due process rights; Eighth Amendment rights, asserting that the conditions of
10 confinement constituted cruel and unusual punishment and Defendants exhibited deliberate
11 indifference to medical needs; and Fourth Amendment rights against illegal search and seizure.
12 (*Id.* at 4-10).

13 On April 1, 2025, Court issued a screening order, pursuant 28 U.S.C. § 1915A finding the
14 First Amended Complaint, as pled, failed to state any viable *Bivens* or FTCA claims. (Doc. No.
15 20). The Court advised Plaintiff of the applicable law and pleading requirements and afforded
16 Plaintiff three options to exercise before May 15, 2025: (1) file an amended complaint; (2) file a
17 notice that he intends to stand on his initial complaint subject to the undersigned recommending
18 the district court dismiss the First Amended Complaint for reasons stated in the April 1, 2025
19 Screening Order; or (3) file a notice to voluntarily dismiss this action, without prejudice, under
20 Federal Rule of Civil Procedure 41(a)(1) because no defendant had yet been served. (*Id.* at 8).
21 The Court expressly warned Plaintiff that if he “fails to timely respond to this Court Order or seek
22 an extension of time to comply” the undersigned “will recommend that the district court dismiss
23 this case as a sanction for Plaintiff’s failure to comply with a court order and prosecute this
24 action.” (*Id.* at 9, ¶ 2). On May 22, 2025. The Court afforded Plaintiff an extension of time until
25 June 27, 2025 to comply the April 1, 2025 Screening Order. (Doc. No. 25). The Court again
26 warned Plaintiff that his failure to timely deliver his response to correctional officials for mailing
27 by June 27, 2025 would result in the recommendation that this action be dismissed, either as a
28 sanction for failure to comply with a court order or for failure to prosecute this action consistent

with Local Rule 110. (*Id.* at 2, ¶ 3). As of the date of this of this Findings and Recommendation, Plaintiff has failed to exercise any of the three options from the Court’s Screening Order, or request an extension of time to comply, and the time to do so has expired.³ *See* docket.

APPLICABLE LAW AND ANALYSIS

A. Legal Standard

Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action when a litigant fails to prosecute an action or fails to comply with other Rules or with a court order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) (citations omitted). Similarly, this Court’s Local Rules, which correspond with Federal Rule of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with ... any order of the Court may be grounds for the imposition by the Court of any and all sanctions ... within the inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power to control their dockets” and, in exercising that power, may impose sanctions, including dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to prosecute an action, obey a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules). In determining whether to dismiss an action, the Court must consider the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

³ Almost 30 days have passed since the date Plaintiff was deliver his response to the Screening Order to correctional officials for mailing.

B. Analysis

After considering each of the above-stated factors, the undersigned concludes dismissal without prejudice is warranted in this case. As to the first factor, the expeditious resolution of litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999).

Turning to the second factor, this Court's need to efficiently manage its docket cannot be overstated. This Court has one of the heaviest caseloads in the nation, and due to the delay in filling judicial vacancies, which was further exacerbated by the COVID-19 pandemic, operated under a declared judicial emergency through May 2, 2021. *See In re Approval of the Judicial Emergency Declared in the Eastern District of California*, 956 F.3d 1175 (9th Cir. 2020). This Court's time is better spent on its other matters than needlessly consumed managing a case with a recalcitrant litigant. The Court cannot effectively manage its docket when a litigant ceases to litigate his/her case or respond to a court order. Thus, the Court finds that the second factor weighs in favor of dismissal.

Delays inevitably have the inherent risk that evidence will become stale or witnesses' memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor—risk of prejudice to defendant—weighs in favor of dismissal since a presumption of injury arises from the unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). Because Plaintiff's inaction amounts to an unreasonable delay in prosecuting this action, the third factor weighs in favor of dismissal.

The fourth factor usually weighs against dismissal because public policy favors the disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose responsibility it is to move a case toward disposition on the merits but whose conduct impedes progress in that direction," which is the case here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). Indeed, "trial courts do not have time to waste on multiple failures by aspiring litigants to follow the rules and requirements of our courts."

1 *Pagtalunan v. Galaza*, 291 F.3d 639, 644 (9th Cir. 2002) (Trott, J., concurring in affirmance of
2 district court's involuntary dismissal with prejudice of habeas petition where petitioner failed to
3 timely respond to court order and noting "the weight of the docket-managing factor depends upon
4 the size and load of the docket, and those in the best position to know what that is are our
5 beleaguered trial judges."). Further, as set forth in the Screening Order, the Court already
6 determined that the Complaint, as pled, failed to state a claim, so this factor does not weigh in
7 favor of the Plaintiff.

8 Finally, the Court's warning to a party that failure to obey the court's order will result in
9 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
10 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's May 22, 2025 Order
11 again expressly warned Plaintiff that his failure to timely comply with the Court's order would
12 result in a recommendation of dismissal of this action "either as a sanction for failure to comply
13 with a court order or for failure to prosecute this action consistent with Local Rule 110." (Doc.
14 25 at 2, ¶ 3). Thus, Plaintiff had adequate warning that dismissal could result from his
15 noncompliance. And the instant dismissal is a dismissal *without* prejudice, which is a lesser
16 sanction than a dismissal with prejudice, thereby satisfying the fifth factor.

17 After considering the factors set forth *supra* and binding case law, the undersigned
18 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and Local Rule 110.

19 Accordingly, it is **RECOMMENDED**:

20 This action be DISMISSED without prejudice for Plaintiff's failure to obey a court order
21 and failure to prosecute this action.

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24 NOTICE

25 These Findings and Recommendations will be submitted to the United States District
26 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
27 of the date of service of these Findings and Recommendations, a party may file written objections
28 with the Court. The document should be captioned, "Objections to Magistrate Judge's Findings

1 and Recommendations.” A party’s failure to file objections within the specified time may result in
2 waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing
3 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4
5 Dated: July 25, 2025


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE